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SJC-13079

COMMONWEALTH vs. MICHAEL W. LODGE, SR.

July 7, 2022.

Practice, Criminal, Capital case, Postconviction relief,  
Dismissal.

The defendant, Michael W. Lodge, Sr., was convicted of murder in the first degree by reason of deliberate premeditation. After plenary review, we affirmed the conviction. See Commonwealth v. Lodge, 431 Mass. 461, 462 (2000). After several subsequent motions for postconviction relief were denied in the Superior Court, Lodge applied to a single justice of this court, pursuant to the gatekeeper provision of G. L. c. 278, § 33E, for leave to appeal from the denial of those motions. The single justice denied the application, and also denied relief on Lodge's additional filings, which essentially sought reconsideration. Lodge purports to appeal from the single justice's rulings.

Lodge now has filed a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001). That rule does not apply here, however, because he does not challenge an interlocutory ruling of the trial court. See Commonwealth v. Companio, 472 Mass. 1004, 1005 (2015). Nonetheless, after considering the record before the single justice and the defendant's filings in this court, we conclude the appeal must be dismissed. A single justice, acting as gatekeeper pursuant to G. L. c. 278, § 33E, may authorize an appeal to proceed in the full court if it presents a "new and substantial question which ought to be determined by the full court." Commonwealth v. DiBenedetto, 475 Mass. 429, 431 n.7 (2016). See Commonwealth v. Gunter, 459 Mass. 480, 487, cert. denied, 565 U.S. 868 (2011); Commonwealth v. Monteiro, 451 Mass. 1009, 1010 (2008).

If, as here, the single justice decides the appeal does not meet that standard and denies the application, the decision "is final and unreviewable." Commonwealth v. Gunter, 456 Mass. 1017, 1017 (2010). See Commonwealth v. Niemic, 451 Mass. 1008 (2008). "A defendant who is denied leave to appeal from a single justice acting as a gatekeeper pursuant to the last sentence of G. L. c. 278, § 33E, has no right to appeal from the single justice's ruling denying leave." Companionio, supra, and cases cited. See Napolitano v. Attorney Gen., 432 Mass. 240, 241 (2000).

Lodge's attempt to appeal from the single justice's denial of his application and subsequent requests for reconsideration, pursuant to G. L. c. 278, § 33E, must be dismissed.<sup>1</sup>

Appeal dismissed.

Michael W. Lodge, Sr., pro se.

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<sup>1</sup> On May 26, 2022, the court issued a notice preceding dismissal in this case, to which the defendant responded with a motion for an extension of time to file a brief. The notice was issued inadvertently. Because the defendant has no right to appeal, there is no need for briefing in this case.